

**ONEIDA JUDICIARY**  
Tsi nu téshakotiya?tolétha?

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**TRIAL COURT**

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**Luther J. Laster,**  
**Petitioner**

v.

**CASE NO: 24-EMP-002**  
**DATE: February 29, 2024**

**Table Games Department –**  
**Oneida Casino,**  
**Respondent**

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**ORDER**

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This case came before the Oneida Trial Court, the Honorable Layatalati Hill presiding.

**Background**

On January 13, 2024, Petitioner was issued a written warning for having a combination of twelve (12) exception reports and/or procedure infractions within a 12-month period, in violation of Standard Operating Procedure Table Games Infraction Accountability (herein after SOPTG-30) and Oneida Personnel Policies and Procedures Manual (herein after OPPP) section *V.D.2.c.1.(g)*. On January 25, 2024, Petitioner appealed to the Area Manager. On February 15, 2024, the Area Manager upheld the immediate supervisor's decision to issue a written warning to Petitioner. On February 21, 2024, Petitioner filed an employee grievance complaint with the Oneida Judiciary. Petitioner challenged the Area Manager's decision to uphold the written warning, claiming the decision was clearly against the weight of the evidence and procedural irregularities were exhibited during the appeal process that were harmful to Petitioner.

**Issues**

1. Did Petitioner timely file his employee grievance appeal in accordance with the OPPP?
2. Did Petitioner sufficiently allege the existence of one or both of the following conditions:
  - a. The Area Manager's decision was clearly against the weight of the evidence, and/or

- b. Procedural irregularities were exhibited during the appeal process that were harmful to Petitioner.

### Analysis

The Court accepts an employee grievance complaint if Petitioner filed his employee grievance complaint with the Court within the timeframe identified in the OPPP. Second, in the event Petitioner complied with the filing requirement, Petitioner must then sufficiently allege the decision of the Area Manager is clearly against the weight of the evidence and/or procedural irregularities were exhibited during the appeal process that were harmful to Petitioner.

#### **Filing of the appeal.**

In accordance with the OPPP, an employee shall file an employee grievance complaint within ten (10) working days from receipt of the Area Manager's decision.

Here, in Petitioner's complaint, he states he received the Area Manager's decision by email on February 15, 2024. Petitioner filed his employee grievance complaint with the Court on February 21, 2024. This was done within ten (10) working days. Therefore, Petitioner complied with the filing timelines.

#### **Was the Area Manager's decision clearly against the weight of the evidence?**

Petitioner alleged the Area Manager's decision was clearly against the weight of the evidence for two reasons: 1) the supervisor failed to adhere to SOPTG-30, and 2) Petitioner was directed to appeal the disciplinary action to the wrong Area Manager, Lambert Metoxen. These claims, however, do not suggest the evidence used to justify the written warning were clearly against the weight of the evidence. These claims are more appropriately identified as procedural irregularities. As such, the Court will construe the claims as claims that procedural irregularities occurred that were harmful to Petitioner. Therefore, the Court will determine if Petitioner is entitled to a hearing based on procedural irregularities being sufficiently alleged to have occurred that were harmful to Petitioner.

#### **Were Procedural Irregularities exhibited during appeal process that harmed Petitioner?**

As stated above, the Court construed Petitioner's allegations as procedural irregularities that were harmful to him. Therefore, this section will address the following alleged procedural irregularities and determine if they were harmful to Petitioner: 1) did the supervisor fail to adhere to SOPTG-30, and 2) was Petitioner directed to appeal the disciplinary action to the wrong Area Manager, Lambert Metoxen.

*Did the supervisor fail to adhere to SOPTG-30.*

Petitioner claimed the immediate supervisor failed to follow the SOPTG-30 by not issuing a disciplinary action when a total of six (6) exception reports were issued to Petitioner. Here, Petitioner was issued twelve (12) exception reports before being issued a disciplinary action. The Area Manager's decision states, "the Supervisor is allowed to use discretion according to SOPTG-30 and that allowing Mr. Laster to accumulate 12 infractions, before issuing a discipline, was being lenient to Mr. Laster." Petitioner claimed this use of discretion by the immediate supervisor conflicts with the intent of the SOPTG-30 and was harmful because it resulted in him being treated unfairly. The Court disagrees with Petitioner that disciplinary action must be issued after six (6) exception reports. The SOPTG-30, section 3.1 states, "In the event an Exception Report, Procedure Infraction, Recovered Monetary Error, Surveillance Report, or Unrecovered Monetary Error occur, an employee *may (emphasis added)* be held accountable for the following standards: Section 3.4 Any combination of six (6) Exception Reports and/or Procedure Infractions within a 12-month period. The use of the word "may" supports the Area Manager's decision stating the supervisor has discretion. Therefore, the Court finds supervisors have discretion on issuing disciplinary action in accordance with SOPTG-30.

Next, Petitioner claimed use of that discretion conflicts with the intent of the SOPTG-30 to ensure consistency and quality in job performance and did not allow him to correct a negative work behavior resulting in him being treated unfairly. The Court disagrees. The Area Manager's decision states, "Both the Supervisor and Mr. Laster review each exception report and both parties are given opportunity to have dialogue on each report." This is supported by Petitioner's signature or initials on each exception report. As a result, the Court finds Petitioner was afforded an opportunity to correct a negative work behavior after each exception report. By having the opportunity to have a dialogue on each report, Petitioner is made aware of the mistake and has

the chance to discuss it with his supervisor. Additionally, had the immediate supervisor held Petitioner accountable after six (6) exceptions reports, Petitioner may have been suspended because with twelve (12) exception reports, there could have been two separate disciplinary actions and under the OPPP, *Section V.D.2.c.1.(g)*, the progressive discipline is written warning, suspension, then termination. Instead, the immediate supervisor's use of discretion to be lenient and not discipline after six (6) exception reports, avoided further disciplinary action against Petitioner. Therefore, the Court finds the immediate supervisor's use of discretion does not conflict with the intent of the SOPTG-30 and did not prevent Petitioner from correcting a negative work behavior resulting in unfair treatment.

*Petitioner directed to appeal the disciplinary action to the wrong Area Manager, Lambert Metoxen.*

Petitioner claimed he was directed to appeal his disciplinary action to the wrong Area Manager, Lambert Metoxen. GTC Resolution #2-28-04-A, in the final "Be if Finally Resolved," states, "the term...Area Manager...shall be added to the DEFINITIONS section in the Oneida Personnel Policies and Procedures and shall mean, in both gaming and non-gaming divisions, either (1) the supervisor of the supervisor who disciplined the employee or, in other words, two levels of supervision in the chain of command above the disciplined employee, or (2) an individual designated to be the Area Manager by the Division Director (or, in divisions where there is no director, the General Manager) and approved by the HRD Manager (or designee)."

Here, Petitioner claimed his supervisor's supervisor or two levels of supervision in the chain of command is Shelly L. Stevens, Table Games Manager. To support this claim, Petitioner submitted a Table Games Chain of Command and Organization Chart. This chart shows Shelly Stevens is the supervisor of the supervisor who disciplined the employee and occupies a position that is, two levels of supervision in the chain of command above the disciplined employee. Lambert Metoxen is listed as the supervisor of Shelly Stevens; he occupies a position that is three levels of supervision in the chain of command above Petitioner. Therefore, the Court agrees Shelly Stevens is the supervisor of the supervisor who disciplined the employee or, in other words, two levels of supervision in the chain of command above the disciplined employee.

The Petitioner made the same claim, that Shelly Stevens should have heard his Area Manager level appeal, in his appeal to the Area Manager. Lambert Metoxen, the Table Games Director acting as the Area Manager, wrote in his response to Petitioner's appeal, "The Table Games Director position has been designated to be the Area Manager for all Table Games appeals." Here, Petitioner claimed Lambert Metoxen failed to support his designation as Area Manager with supporting documentation. Under GTC Resolution #2-28-04-A, the designation of an individual to be the Area Manager must be approved by the HRD Manager. GTC Resolution #2-28-04-A states, "Area Manager...shall mean... (2) an individual designated to be the Area Manager by the Division Director (or, in divisions where there is no director, the General Manager) and approved by the HRD Manager (or designee)." The Court did not receive a copy of HRD's approval of the designation from any of the parties. As a result, the Court is unable to determine if a procedural irregularity exists as it relates to the designation of the Table Games Director to act as the Area Manager for all Table Games Area Manager level appeals. However, even if the designation was not properly made and Shelly Stevens should have heard Petitioner's Area Manager level appeal, Petitioner must still sufficiently identify how the procedural irregularity was harmful to Petitioner.

Regarding harm from the above alleged procedural irregularity, Petitioner claimed the lack of documentation for the Area Manager designation violated his due process rights and is a procedural irregularity warranting the overturning of his disciplinary action. To support this claim, Petitioner cited to an Oneida Personnel Commission decision, docket #09-WW-007, dated October 12, 2009. In that case, the Personnel Commission overturned an employee's written warning because the disciplinary action issued by the immediate supervisor directed the employee to appeal to the wrong individual. The Personnel Commission, however, failed to address the issue of harm. The OPPP requires a procedural irregularity to be harmful to a party. A procedural irregularity, by itself, is not grounds for the Area Manager's decision to be overturned. The procedural irregularity must also be harmful. Therefore, the Court finds Personnel Commission docket # 09-WW-007, does not control here because the decision failed to address the harm requirement. Petitioner's only claim close to addressing harm regarding the Area Manager designation is that it violated his due process rights. Employees have the right to appeal disciplinary actions to the Area Manager or designee. Petitioner was afforded this right to

appeal his disciplinary action to the Area Manager level. The Area Manager level appeal and decision met all time requirements in the OPPP. Therefore, his due process of appeal was afforded to him, and Petitioner makes no claim of what harm he experienced because of an alleged wrongful designation.

As described above, Petitioner was issued a written warning for having a combination of twelve (12) exception reports and/or procedure infractions within a 12-month period, in violation of SOPTG-30. Petitioner does not dispute he has twelve (12) exception reports within a 12-month period. Because the Court found above that the immediate supervisor properly exercised discretion under SOPTG-30 when issuing a disciplinary action, and because Petitioner makes no argument that the Area Manager's decision would be different had Shelly Stevens heard the appeal, the Court finds there is no alleged harm by Petitioner that would require a hearing. Therefore, even if it was a procedural irregularity to have Petitioner appeal to Lambert Metoxen, there was no harm that was sufficiently alleged by Petitioner. As a result, the Area Manager's decision must be upheld.

### **Principles of Law**

#### ***Oneida Nation Personnel Policies and Procedures Manual***

##### *Section V.D.2.c.1. Work Performance*

g) Negligence in the performance of assigned duties. (W/S/T)

##### *Section V.D.6. b. Filing a Complaint*

1) An employee may appeal the Area Manager's decision to the Oneida Personnel Commission by filing a complaint with the Human Resources Department on behalf of the Oneida Personnel Commission.

a) The employee shall file the appeal within ten (10) working days from the employee's receipt of the Area Manager's decision.

##### *Section V.D.6.d.1. Review of the Complaint.*

1) The Human Resources Department shall provide the information obtained to the Oneida Personnel Commission members selected to serve as the hearing body for the

complaint, and the Oneida Personnel Commissioners<sup>1</sup> shall review all the information submitted by the Petitioner and the Human Resources Department to determine if one or both conditions exist;

- a. The decision of the Area Manager is clearly against the weight of the evidence and/or,
- b. Procedural irregularities were exhibited during the appeal process that may have been harmful to one of the parties to the grievance.

2) If Oneida Personnel Commission members selected to serve as the hearing body for the complaint find one or both conditions exist, the Human Resources Department shall convene the Oneida Personnel Commission to hear the grievance.

3) If the Oneida Personnel Commission members find that neither condition exists, the Oneida Personnel Commission will deny the appeal for a hearing and affirm the decision of the Area Manager.

### ***Standard Operating Procedure Table Games Infraction Accountability***

*Section 3.1* In the event an Exception Report, Procedure Infraction, Recovered Monetary Error, Surveillance Report, or Unrecovered Monetary Error occur, an employee may be held accountable for the following standards:

#### *Section 3.2 Unrecovered monetary errors.*

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|---------------------------|---|
| 3.2.1 \$10.01 to \$99.99: | Five (5) allowed in a one-year period (12 months).  |
| 3.2.2 \$100 to \$499.99:  | Three (3) allowed in a one-year period (12 months). |
| 3.2.3 \$500 and above:    | Any one (1) within a one-year period (12 months).   |

#### *Section 3.3 Recovered monetary errors.*

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| 3.3.1 \$10.01 to \$99.99:  | Six (6) allowed in a one-year period (12 months).  |
| 3.3.2 \$100 to \$499.99:   | Four (4) allowed in a one-year period (12 months). |
| 3.3.3 \$500 and above:   | Two (2) allowed in a one-year period (12 months).  |
| 3.3.4 Any combination of six (6) Unrecovered/Recovered Monetary errors in a 12-month period. |  |

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<sup>1</sup> The Court is exercising jurisdiction over employee grievances in accordance with Oneida Business Committee Resolution 03-13-19-C. This resolution gives the Court authority to hear employee grievances until the OPC is ready to resume its hearing authority. To date, the OPC is not yet ready to resume its hearing authority.

*Section 3.4* Any combination of six (6) Exception Reports and/or Procedure Infractions within a 12-month period.

3.4.1 Any combination of reports issued for the same occurrence shall be considered one occurrence.

3.4.2 Surveillance Reports not related to monetary errors may be addressed on a case-by-case basis.

*Section 3.5* A Supervisor who does not follow this SOP may be subject to disciplinary action.

### **Findings**

1. The Court has subject matter and personal jurisdiction over this matter.
2. Notice was given to all those entitled to notice.
3. On January 13, 2024, Petitioner was issued a written warning for having a combination of twelve (12) exception reports and/or procedure infractions within a 12-month period, in violation of Standard Operating Procedure Table Games Infraction Accountability and Oneida Personnel Policies and Procedures Manual section *V.D.2.c.1.(g)*.
4. Petitioner has a combination of twelve (12) exception reports and/or procedure infractions within a 12-month period.
5. On January 25, 2024, Petitioner appealed to the Area Manager.
6. On February 15, 2024, the Area Manager upheld the immediate supervisor's decision to issue a written warning to Petitioner.
7. On February 21, 2024, Petitioner filed an employee grievance complaint with the Oneida Judiciary.
8. The Court construed Petitioner's claims as claims that procedural irregularities occurred that were harmful to Petitioner.
9. Supervisors have discretion on issuing disciplinary action in accordance with SOPTG-30.
10. Petitioner was afforded an opportunity to correct a negative work behavior after each exception report.
11. The immediate supervisor's use of discretion does not conflict with the intent of the SOPTG-30.
12. Petitioner was not prevented from correcting a negative work behavior resulting in unfair treatment.



13. Petitioner, on the disciplinary action form, was directed to appeal his disciplinary action to Lambert Metoxen, Table Games Director.
14. Shelly Stevens is the supervisor of the supervisor who disciplined the employee or; she occupies a position that is two levels of supervision in the chain of command above the disciplined employee.
15. Personnel Commission docket, # 09-WW-007, does not control here because the decision failed to address the harm requirement for procedural irregularities.
16. Petitioner was afforded the right to appeal his disciplinary action to the Area Manager level.
17. The Area Manager's decision was not clearly against the weight of the evidence.
18. Procedural irregularities may have been exhibited during the appeal process but were not harmful to Petitioner.

### **Order**

The Decision of the Area Manger is UPHELD.

IT IS SO ORDERED.

By the authority vested in the Oneida Trial Court pursuant to Resolution 01-07-13-B of the General Tribal Council an order was signed on February 29, 2024.

  
Layatalati Hill, Chief Trial Court Judge